



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Waste Management Division Of Water And Waste Management TITLE-SERIES: 33-01B

RULE TYPE: Legislative Amendment to Existing Rule: Repeal of existing rule:

RULE NAME: 33-01B Requirements for the Management of Coal Combustion Residuals

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §§ 22-15-5 and 22-15-10

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§22-15-5 provides the director powers and duties on rules and rulemaking. This authorizes the director to promulgate rules in compliance with the West Virginia administrative procedures. The director, after public notice and opportunity for public hearing may issue a permit with reasonable terms and conditions for installation, establishment, modification, operation or closure of a solid waste facility.
§22-15-10 promulgates prohibitions and permits required for solid waste disposal. Open dumps are prohibited and it is unlawful for any person to create, contribute to, or operate an open dump or for any landowner to allow an open dump to exist on the landowners property unless that open dump is under a compliance schedule approved by the director. It is unlawful for any person, unless the person holds a valid permit from the division to install, establish, construct, modify, operate, or abandon any solid waste facility. A person may not dispose of any solid waste in this state in a manner which endangers the environment or the public health, safety, or welfare as determined by the director.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/25/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/26/2021

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: Yes

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Public notice via WVDEP email listserv

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This subpart establishes minimum national criteria for purposes of determining which solid waste disposal facilities and solid waste management practices do not pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act.

This subpart applies to owners and operators of new and existing landfills and surface impoundments, including any lateral expansions of such units that dispose or otherwise engage in solid waste management of CCR generated from the combustion of coal at electric utilities and independent power producers. Unless otherwise provided in this subpart, these requirements also apply to disposal units located off-site of the electric utility or independent power producer. This subpart also applies to any practice that does not meet the definition of a beneficial use of CCR.

This subpart also applies to inactive CCR surface impoundments at active electric utilities or independent power producers, regardless of the fuel currently used at the facility to produce electricity.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This Legislative Rule adopts the federally mandated 40 CFR Part 257 Subpart D, which is required to obtain closure and permitting primacy for the Coal Combustion Residual (CCR) program.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There is no overall economic impact on revenues of the state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There is no economic impact of the rule on special revenue accounts.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

There is no economic impact on the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There is no overall economic impact.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jason E Wandling -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 33
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WASTE MANAGEMENT

SERIES 1B
REQUIREMENTS FOR THE MANAGEMENT OF COAL COMBUSTION RESIDUALS

§33-1B-1. General.

1.1. Scope. -- This Legislative Rule adopts 40 CFR Part 257 Subpart D, Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments, by reference. This subpart applies to owners and operators of new and existing landfills and surface impoundments, including any lateral expansions of such units that dispose or otherwise engage in solid waste management of CCR generated from the combustion of coal at electric utilities and independent power producers. Unless otherwise provided in this subpart, these requirements also apply to disposal units located off-site of the electric utility or independent power producer. This subpart also applies to any practice that does not meet the definition of a beneficial use of CCR.

Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in Subpart D of 40 CFR Part 257, promulgated as of December 14, 2020, excluding 40 CFR 257.50(e), 40 CFR 257.90(g), and 40 CFR 257.95(h)(2), and including 40 CFR 257.3-1, 257.3-2, and 257.3-3, wherein they exclusively relate to standards for the disposal of coal combustion residuals in landfills and surface impoundments, are hereby incorporated as part of the West Virginia Solid Waste Management Regulations, 33CSR1, et seq.

1.2. Authority. -- W. Va. Code §§ 22-15-5 and 22-15-10.

1.3. Filing Date. --

1.4. Effective Date. --

§33-1B-2. Definitions.

2.1. Except as otherwise provided, all material definitions, reference materials, and other ancillaries that are part of incorporated sections of 40 CFR Part 257 are also hereby incorporated as part of the West Virginia Solid Waste Management Regulations.

2.2. In all locations in this series, where text from 40 CFR Part 257 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into this chapter. The following terms, where they appear in the Code of Federal Regulations shall, for the purpose of this chapter, have the following meanings or interpretations:

2.2.a. “Secretary” shall supplant the “State Director” wherever it appears.

2.2.b. “Qualified professional engineer” or “engineer” means a “professional engineer” certified to practice in the State of West Virginia.

2.3. Definitions in 40 CFR 257.53 are incorporated by reference into this part and are applicable to CCR landfills and CCR surface impoundments.